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November 17, 2005

The Honorable Jeff Sessions  
Chairman  
Subcommittee on Administrative  
Oversight and the Courts  
311 Hart Senate Bldg.  
United States Senate  
Washington, DC 20510

The Honorable Charles Schumer  
Ranking Minority Member  
Subcommittee on Administrative  
Oversight and the Courts  
311 Hart Senate Bldg.  
United States Senate  
Washington, DC 20510

### Re: Legislative Proposals to Split the Ninth Circuit – Oppose

Dear Chairman Sessions and Senator Schumer:

The Executive Committee of the Litigation Section of the State Bar of California opposes the latest in a series of proposals to split the Ninth Circuit. This opposition is consistent with our opposition to similar, unsuccessful proposals that have been made in the past.

We request that this opposition be included in the record of your October 26, 2005 hearing on these proposals.

We oppose proposals to split the Ninth Circuit primarily because such a split would hinder, rather than promote, the efficient administration of justice. A split would require a dramatic increase in costs resulting from the duplication of staffs of court clerks, law clerks, research attorneys and other administrative personnel and require the construction of at least one, additional, costly courthouse, while diminishing economies of scale, uniformity of decisions and collegiality currently enjoyed by the Ninth Circuit. We also believe that near unanimity among judges of the Ninth Circuit, including four recent (2000 and later) appointees to the Ninth Circuit (Judges Bea, Rawlinson, Clifton and Callahan), confirms that there is no legitimate reason to split the Ninth Circuit. (See attached letter of Hon. Carlos Bea, U.S. Circuit Judge, Ninth Circuit Court of Appeals.)

The Litigation Section of the State Bar of California has nearly 10,000 members and is the largest section of the State Bar of California. Membership in the Litigation Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources. All of our members practice within the states and territories included within the Ninth Circuit, and, thus, have a direct interest in any proposals to split the Ninth Circuit.

November 18, 2005

Page 2

The mission of the Litigation Section is to promote excellence and civility in litigation and alternative dispute resolution. The Litigation Section is comprised of lawyers with diverse practices and perspectives. Our members represent both plaintiffs and defendants. Our practices span California, from major urban areas to and including small towns and rural areas. We also include among our members sole practitioners, as well as those who practice with larger firms, including many which are national and international.

We avoid taking political positions or positions that may be divisive of our membership. We do, however, take positions designed to promote and defend the intent of the original framers of the Constitution that the judiciary operate as an independent, co-equal branch of government. Like members of the Judiciary Committee who reiterated the importance of judicial independence during the recent confirmation hearings of Chief Justice Roberts, we value a strong, independent judiciary.

Our opposition to the proposed split of the Ninth Circuit is based on the following:

- The Administrative Office of the U.S. Courts has estimated that the costs of splitting the Ninth Circuit would include start-up costs of nearly \$100 million and recurring annual costs of \$15 million. Such costs are unnecessary, wasteful and inappropriate in light of the current federal deficit and the funding crisis faced by the federal courts.
- A split of the Ninth Circuit would destroy the benefits of a unified body of law for the vital Pacific Rim economic area. The 1998 Report of the Commission headed by Justice Byron R. White (Commission on Structural Alternatives for the Federal Courts of Appeal, Final Report (1998)) recommended against splitting the Ninth Circuit because there was no persuasive evidence that it would improve the administration of justice and because a single body of commercial and maritime laws governing relations with other Pacific Rim nations was a strength that should be maintained. Similarly, it is important to have a unified body of federal law governing trade relations and immigration control along the California-Arizona border with Mexico, as well as consistent interpretation of laws that affect Lake Tahoe, which rests on the border between California and Nevada.
- The leading current proposal to split the Ninth Circuit would create an additional, narrow and oddly-shaped circuit that would run from the Mexican border to the Arctic Circle. Conferences among judges in such a new circuit necessarily would involve travel to a location less centrally located than the Ninth Circuit's current headquarters city, San Francisco. Indeed, air travel within the proposed new circuit often would involve connecting flights in San Francisco. Thus, such a split would hinder, rather than promote, judicial efficiency.
- Although proponents of a Ninth Circuit split have suggested that a split would promote collegiality and uniformity, the opposition of virtually all Ninth Circuit judges strongly suggests that there is considerable collegiality among the judges of the Ninth Circuit. With respect to uniformity of Ninth

November 17, 2005

Page 3

Circuit decisional law, the Ninth Circuit, on October 1, 2005 adopted a rule amendment that would increase the size of the en banc courts from 11 to 15 judges. This rule change will ensure that decisions by the Ninth Circuit sitting en banc will consist of a majority of the 28 authorized active judges and that en banc decisions would be sufficiently representative of the views of all active judges to assure consistency and uniformity.

In sum, the proposal to split the Ninth Circuit is an ill-conceived solution in search of a non-existent problem. The Ninth Circuit has been consistently and effectively serving the western United States for over 110 years and currently provides uniformity of decision for an important region of our nation. Dividing this venerable institution will yield no benefits, and will squander the significant economies of scale that the circuit currently enjoys.

The Litigation Section of the State Bar of California renews its opposition and urges you to reject the proposals to split the Ninth Circuit. Our renewed opposition joins the opposition of virtually all other bar groups that would be affected by the proposed split, including the State Bar of Washington, the State Bar of Arizona, the Hawaii State Bar Association, the Montana State Bar Association, the Los Angeles County Bar Association, the Bar Association of San Francisco, the San Diego County Bar Association and the Federal Bar Association.

Very truly yours,



Richard L. Seabolt  
Chair, Litigation Section  
The State Bar of California

**THIS POSITION IS ONLY THAT OF THE EXECUTIVE COMMITTEE OF THE LITIGATION SECTION OF THE STATE BAR OF CALIFORNIA. THIS POSITION HAS NOT BEEN ADOPTED BY EITHER THE STATE BAR'S BOARD OF GOVERNORS OR OVERALL MEMBERSHIP, AND IS NOT TO BE CONSTRUED AS REPRESENTING THE POSITION OF THE STATE BAR OF CALIFORNIA.**

**MEMBERSHIP IN THE LITIGATION SECTION IS VOLUNTARY AND FUNDING FOR SECTION ACTIVITIES, INCLUDING ALL LEGISLATIVE ACTIVITIES, IS OBTAINED ENTIRELY FROM VOLUNTARY SOURCES.**

RLS:cc  
Enclosure

November 18, 2005

Page 4

cc:           The Honorable Arlen Specter  
              Chairman, Senate Committee on the Judiciary  
              United States Senate  
              711 Hart Office Building  
              Washington, D.C. 20510

              The Honorable Patrick Leahy  
              Ranking Member, Senate Committee on the Judiciary  
              United States Senate  
              433 Russell Senate Office Bldg.  
              Washington, DC 20510

              The Honorable Dianne Feinstein  
              Member, Senate Committee on the Judiciary  
              United States Senate  
              331 Hart Senate Office Building  
              Washington, D.C. 20510-0504

              The Honorable Jim Nussle  
              Chairman, House Committee on the Budget  
              United States House of Representatives  
              303 Cannon House Office Building  
              Washington, D.C. 20515-1501

              The Honorable David Dreier  
              Chairman, Committee on Rules  
              United States House of Representatives  
              233 Cannon HOB  
              Washington, D.C. 20515

              Hon. Mary M. Schroeder  
              Chief Judge  
              United States Court of Appeals for the Ninth Circuit  
              96 Seventh St., Ste. 205  
              San Francisco, CA 94103-1526

              Hon. Carlos Bea  
              United States Circuit Court Judge  
              United States Court of Appeals for the Ninth Circuit  
              96 Seventh St., Ste. 205  
              San Francisco, CA 94103-1526



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

95 SEVENTH STREET, SUITE 205  
SAN FRANCISCO, CALIFORNIA 94103-1526

CHAMBERS OF  
CARLOS TYBURCIO BEA  
U.S. CIRCUIT JUDGE

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Judge\_Bea@ca9.uscourts.gov

October 21, 2005

Chairman, Judiciary Subcommittee on  
Administrative Oversight and the Courts  
Hart Senate Office Building  
Washington, D.C. 20510

Re: Proposed Ninth Circuit Split Bill.

My dear Senator Sessions,

I am writing on behalf of recent (2000 and later) appointees to the U.S. Court of Appeals for the Ninth Circuit, in opposition to the proposed Bills to split our Circuit. I have been authorized by Judges Rawlinson, Clifton and Callahan to write you on their behalf.

Some of us took the Bench with some trepidation that the size of the Circuit and the volume of cases would result in inefficiencies; that the number of judges would result in lack of collegiality. Others had no such skepticism.

Regardless our views before joining the Ninth Circuit, all of us have been impressed with the efficiency with which the court dispatches its business and our procedures for maintaining a uniform federal jurisprudence in our Circuit.


Additionally, whether we were appointed by Democratic or Republican presidents, our experience is that the number of judges, the varied panels and the several locations in which we sit enhances rather than diminishes the enthusiasm and collegiality we have encountered.

Chairman, Judiciary Subcommittee on  
Administrative Oversight and the Courts  
October 21, 2005  
Page 2

It is all too easy to look at the Ninth Circuit's size and case load from the outside and summarily conclude changes are needed. But take it from some recent arrivals who are on the inside its administrative efficiency is second to none.

Thank you for your consideration of our views. If you have any further questions, don't hesitate to ask them of us.

Very truly yours,

  
Carlos Tiburcio Bea  
U.S. Circuit Judge